

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

IN RE APPLICATION OF: SIMON CHU, ET AL. SERIAL NO.: 10/674,841 FILED: 30 SEPTEMBER 2003 FOR: LOCATION SENSITIVE SOFTWARE DOWNLOAD	ATTY. DOCKET NO.: RPS920030112US2 § § § EXAMINER: NEWAY, SAMUEL G. § § CONFIRMATION NO.: 4457 § § ART UNIT: 2626 § § § §
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SUBSTITUTE APPEAL BRIEF UNDER 37 C.F.R. 41.37

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Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This Substitute Appeal Brief is submitted in support of the Appeal of the Examiner's final rejection of Claims 1-4, 6-8, 10-17 and 19 in the above-identified application. A Notice of Appeal was electronically filed in this case on March 2, 2007 and received in the United States Patent and Trademark Office on March 2, 2007. An original Appeal Brief was filed on April 25, 2007.

This Substitute Appeal Brief is filed in response to a May 30, 2007 Notification of Non-Compliant Appeal Brief, for failing to list in the specification or drawing where support for elements found in independent Claim 15 is found. Appellants believe that the present brief provides this information as required.

Appellants do not believe that any additional fees are due for filing this Substitute Appeal Brief. In the event that such fees are due, please file such fees, as well as any other required fees

necessary for the appeal and prosecution of the present application, to **IBM CORPORATION DEPOSIT ACCOUNT No. 50-0563**.

REAL PARTY IN INTEREST

The real party in interest in the present Application is International Business Machines Corporation, the Assignee of the present application as evidenced by the Assignment set forth at reel 014302, frame 0940.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, the Appellants' legal representative, or assignee, which directly affect or would be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1-4, 6-8, 10-17 and 19 stand finally rejected by the Examiner as noted in the Final Office Action dated February 6, 2007. The rejections of Claims 1-4, 6-8, 10-13, 15-17 and 19 under 35 U.S.C. § 103(a) are appealed.

STATUS OF AMENDMENTS

No amendments to the claims have been made subsequent to the February 6, 2007 Final Office Action from which this Appeal is filed.

SUMMARY OF THE CLAIMED SUBJECT MATTER

As recited by Appellants' exemplary independent **Claim 1**, Appellants' invention provides a method for regulating a download of a software according to a physical location of a computer on which the software is to be downloaded (as supported in the originally filed specification on page 10, lines 1-3). The method comprises the steps of storing a first list of authorized location ranges where a client computer is authorized to receive a download of a first software from a server (supported in the originally filed specification on page 11 lines 4-5), determining a physical location of the client computer (supported on page 11, line 6), comparing

the physical location of the client computer with the first list of authorized location ranges (supported on page 11, lines 7-8), downloading the first software only if the physical location of the client computer is within the range of one of the authorized location ranges from the first list of authorized location ranges (supported on page 11, lines 9-11), and downloading the first software only if the client computer does not receive information derived from a GPS signal (supported on page 9, lines 17-19).

As described in appealed exemplary **Claim 2**, the method may further comprise the steps of, upon determining that the physical location of the client computer is not within the first list of authorized location ranges, requesting a download of a second software, the second software having a second list of authorized location ranges (supported in the originally filed specification on page 11, lines 14-16), comparing the physical location of the client computer with the second list of authorized location ranges (supported on page 11, lines 17-18), and downloading the second software only if the physical location of the client computer is within the range of one of the authorized location ranges from the second list of authorized location ranges (supported on page 11, lines 19-21).

As described in appealed exemplary **Claim 7**, the physical location of the computer may be determined by a local enterprise generated signal that is confined to a single room (as supported on page 11, lines 6-10 of the originally filed specification).

As described in exemplary **Claim 8**, the invention includes a system for regulating a download of a software from a server to a client computer on a network, the regulating being determined by a physical location of the client computer on which the software is to be downloaded (supported in the originally filed specification on page 12, lines 13-15). The system comprises means for storing a first list of authorized location ranges where a client computer is authorized to receive a download of a first software from a server (supported on page 12, lines 16-17), means for determining a physical location of the client computer (supported on page 12, line 18), means for comparing the physical location of the client computer with the first list of authorized location ranges (supported on page 12, lines 19-20), means for downloading the first software only if the physical location of the client computer is within the range of one of the

authorized location ranges from the first list of authorized location ranges (supported on page 12, lines 21-23), means for, upon determining that the physical location of the client computer is not within the first list of authorized location ranges, requesting a download of a second software, the second software having a second list of authorized location ranges (supported on page 12, lines 25-28), means for comparing the physical location of the client computer with the second list of authorized location ranges (supported on page 13, lines 1-2), and means for downloading the second software only if the physical location of the client computer is within the range of one of the authorized location ranges from the second list of authorized location ranges (supported on page 12, lines 3-5).

As recited by Appellants' exemplary independent **Claim 15**, Appellants' invention further provides a computer storage medium, on which a computer product resides, for regulating a download of a software according to a physical location of a computer on which the software is to be downloaded (as supported in the originally filed specification on page 10, lines 1-3; page 9, line 21 – page 10, line 3). The computer program product comprises program code for storing a first list of authorized location ranges where a client computer is authorized to receive a download of a first software from a server (supported in the originally filed specification on page 11 lines 4-5; page 9, line 21 – page 10, line 3), program code for determining a physical location of the client computer (supported on page 11, line 6; page 9, line 21 – page 10, line 3), program code for comparing the physical location of the client computer with the first list of authorized location ranges (supported on page 11, lines 7-8; page 9, line 21 – page 10, line 3), program code for downloading the first software only if the physical location of the client computer is within the range of one of the authorized location ranges from the first list of authorized location ranges (supported on page 11, lines 9-11; page 9, line 21 – page 10, line 3), and program code for downloading the first software only if the client computer does not receive information derived from a GPS signal (supported on page 9, lines 17-19; page 9, line 21 – page 10, line 3).

As described in **Claim 19**, the system may further comprise means for, in response to determining that the second software is not authorized to be downloaded to the client computer at a current physical location for the client computer, evaluating subsequent alternate programs

until an authorized program is located on the server, and downloading the authorized program from the server to the client computer (as supported on page 8, lines 9-21 of the present specification).

GROUND'S OF REJECTION TO BE REVIEWED ON APPEAL

- A. The Examiner's rejection under 35 U.S.C. § 103(a) of Claims 1, 3-4, 6, 15 and 17 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – "*Kyotoku*") in view of *Baese et al.* (USPGPub 2002/0082025 – "*Baese*") is to be reviewed on Appeal.
- B. The Examiner's rejection under 35 U.S.C. § 103(a) of Claims 2 and 16 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – "*Kyotoku*") in view of *Baese et al.* (USPGPub 2002/0082025 – "*Baese*"), and further in view of *Wall* (USPGPub 2002/0017977 – "*Wall*") is to be reviewed on Appeal.
- C. The Examiner's rejection under 35 U.S.C. § 103(a) of Claim 7 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – "*Kyotoku*") in view of *Baese et al.* (USPGPub 2002/0082025 – "*Baese*") is to be reviewed on Appeal.
- D. The Examiner's rejection under 35 U.S.C. § 103(a) of Claims 8 and 10-12 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – "*Kyotoku*") in view of *Wall* (USPGPub 2002/0017977 – "*Wall*") is to be reviewed on Appeal.
- E. The Examiner's rejection under 35 U.S.C. § 103(a) of Claim 19 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – "*Kyotoku*") in view of *Wall* (USPGPub 2002/0017977 – "*Wall*") is to be reviewed on Appeal.

ARGUMENTS

- A. The Examiner's rejection under 35 U.S.C. § 103(a) of Claims 1, 3-4, 6, 15 and 17 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – "*Kyotoku*") in view of *Baese et al.* (USPGPub 2002/0082025 – "*Baese*") is to be reviewed on Appeal.

The Examiner's rejection of Claims 1, 3-4, 6, 15 and 17 is improper since the cited prior art does not teach or suggest all of the limitations of the claims.

With regards to exemplary **Claim 1**, a combination of the cited art does not teach or suggest "downloading the first software only if the client computer does not receive information derived from a GPS signal," as supported in the present specification as originally filed at paragraph [0027] (page 9, lines 17-19). As stated in this cited passage of the originally filed specification, the application will only be downloaded from a server if there is no detection of a GPS signal.

No combination of the cited art teaches or suggests making the downloading of software contingent upon a receiving computer being "deaf" to a GPS signal.

In *Kyotoku*, the Examiner cites two manners in which a client computer can receive a GPS signal in a "clean room." In paragraph [0042], *Kyotoku* teaches that "a GPS antenna is...extended...to the outside where it can receive an electronic wave." In paragraph [0072], *Kyotoku* teaches that the GPS signal can be received from a "LAN, without the interface for the GPS receiver 108 being embedded" in a computer." In either scenario, it is clear that the computer contemplated by *Kyotoku* is able to receive "information derived from a GPS signal," either directly via a GPS receiver or indirectly via a LAN.

Baese teaches in cited paragraph [0011] that if an area is unable to receive a GPS signal, then a device's location can be derived using Bluetooth beacons.

However, neither cited art makes downloading of software contingent upon a computer being “deaf” to information derived from a GPS signal. In fact, none of the cited art ever mentions downloading software at all, much less with reference to such downloading being contingent upon the receiving computer not receiving a GPS signal.

As the cited art does not teach or suggest all of the limitations of the presently claimed invention, this rejection is not well founded and should be reversed.

- B. The Examiner’s rejection under 35 U.S.C. § 103(a) of Claims 2 and 16 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – “*Kyotoku*”) in view of *Baese et al.* (USPGPub 2002/0082025 – “*Baese*”), and further in view of *Wall* (USPGPub 2002/0017977 – “*Wall*”) is to be reviewed on Appeal.

The Examiner’s rejection of Claims 2 and 16 is improper since the cited prior art does not teach or suggest all of the limitations of the claims.

With regards to exemplary **Claim 2**, a combination of the cited art does not teach or suggest “upon determining that the physical location of the computer is not within the first list of authorized location ranges, requesting a download of a second software, the second software having a second list of authorized location ranges,” as supported on page 10, lines 16-18 of the originally filed specification.

The Examiner cites paragraph [0103] of *Wall* for teaching this feature. The paragraph, cited in full, states:

[0103] It is then determined, at step s515, whether the (“current”) access/usage parameters match the (“pre-stored”) permission parameters. If the parameters match (“Y”), process 500 allows normal access/usage of the controlled system/commodity, as shown by step s520. If the parameters do not match (“N”), process 500 may prohibit or limit the access/usage, as shown by step s525.

The cited passage, as well as any combination of the cited, does not teach or suggest downloading a second software if the first software is not authorized to download to authorized location ranges. That is, “prohibit or limit the access/usage” does not teach or suggest calling a second authorized software for downloading. Furthermore, a combination of the cited art never teaches or suggests downloading any type of software, including second software, in response to a first software not being authorized for downloading.

As the cited art does not teach or suggest all of the limitations of the presently claimed invention, this rejection is not well founded and should be reversed.

- C. The Examiner’s rejection under 35 U.S.C. § 103(a) of Claim 7 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – “*Kyotoku*”) in view of *Baese et al.* (USPGPub 2002/0082025 – “*Baese*”) is to be reviewed on Appeal

The Examiner’s rejection of Claims 7 is improper since the cited prior art does not teach or suggest all of the limitations of the claim.

With regards to **Claim 7**, a combination of the cited art does not teach or suggest determining a physical location of a computer using a local enterprise generated signal that is confined to a single room, as supported in the original specification on page 11, lines 9-10.

The Examiner cites paragraph [0011] of *Baese* for teaching that a Bluetooth or similar beacon transmitter can be used indoors where GPS signals are not available, but there is no teaching or suggestion in *Baese*, in combination with the other cited art, for confining a local enterprise generated signal to a single room.

As the cited art does not teach or suggest all of the limitations of the presently claimed invention, this rejection is not well founded and should be reversed.

- D. The Examiner's rejection under 35 U.S.C. § 103(a) of Claims 8 and 10-12 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – “*Kyotoku*”) in view of *Wall* (USPGPub 2002/0017977 – “*Wall*”) is to be reviewed on Appeal

The Examiner's rejection of Claims 8 and 10-12 is improper since the cited prior art does not teach or suggest all of the limitations of the claims.

The scope of **Claim 8** is similar to that of Claim 2 discussed above. However, in the rejection of Claim 8, the Examiner has not cited *Baese*. For reasons cited above, Appellants believe that the teaching of *Baese* is irrelevant, and thus now simply reiterate the arguments set forth above for **Claim 2**.

As the cited art does not teach or suggest all of the limitations of the presently claimed invention, this rejection is not well founded and should be reversed.

- E. The Examiner's rejection under 35 U.S.C. § 103(a) of Claim 19 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – “*Kyotoku*”) in view of *Wall* (USPGPub 2002/0017977 – “*Wall*”) is to be reviewed on Appeal.

The Examiner's rejection of Claim 19 is improper since the cited prior art does not teach or suggest all of the limitations of the claim.


The Examiner cites *Wall* for teaching the feature of “in response to determining that the second software is not authorized to be downloaded by the computer at a current physical location of the computer, evaluating subsequent alternate programs until an authorized program is located on the computer, and downloading the authorized program on the computer,” as supported in the original specification on page 13, lines 23-26. A combination of the cited prior art, including *Wall*, and specifically the cited passage of *Wall* at paragraph [0029], makes no mention or suggestion of the feature of evaluating alternate programs in an iterative manner (as supported in Figure 3, elements 314 and 316) until an authorized program is located.

As the cited art does not teach or suggest all of the limitations of the presently claimed invention, this rejection is not well founded and should be reversed.

CONCLUSION

Appellants have pointed out with specificity the manifest error in the Examiner's rejections, and the claim language which renders the invention patentable over the various combinations of references. Appellants, therefore, respectfully request that this case be remanded to the Examiner with instructions to issue a Notice of Allowance for all pending claims.

Respectfully submitted,



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CLAIMS APPENDIX

1. A method for regulating a download of a software from a server to a client computer on a network, the regulating being determined by a physical location of the client computer on which the software is to be downloaded, the method comprising:

storing a first list of authorized location ranges where a client computer is authorized to receive a download of a first software from a server;

determining a physical location of the client computer;

comparing the physical location of the client computer with the first list of authorized location ranges;

downloading the first software only if the physical location of the client computer is within the range of one of the authorized location ranges from the first list of authorized location ranges; and

downloading the first software only if the client computer does not receive information derived from a GPS signal.

2. The method of claim 1, further comprising:

upon determining that the physical location of the client computer is not within the first list of authorized location ranges, requesting a download of a second software, the second software having a second list of authorized location ranges;

comparing the physical location of the client computer with the second list of authorized location ranges, and

downloading the second software only if the physical location of the client computer is within the range of one of the authorized location ranges from the second list of authorized location ranges.

3. The method of claim 1, further comprising:

upon determining that the client computer is not located within an authorized area for a requested software download, generating an alert to a software administrator server of the unauthorized area in which the client computer is located while attempting to download a restricted application.

4. The method of claim 2, wherein the first and second lists of authorized location ranges are stored in the server.

5. (cancelled)

6. The method of claim 1, wherein the physical location of the computer is determined from a local enterprise generated signal.

7. The method of claim 6, wherein the local enterprise generated signal is confined to a single room.

8. A system for regulating a download of a software from a server to a client computer on a network, the regulating being determined by a physical location of the client computer on which the software is to be downloaded, the system comprising:

means for storing a first list of authorized location ranges where a client computer is authorized to receive a download of a first software from a server;

means for determining a physical location of the client computer;

means for comparing the physical location of the client computer with the first list of authorized location ranges;

means for downloading the first software only if the physical location of the client computer is within the range of one of the authorized location ranges from the first list of authorized location ranges;

means for, upon determining that the physical location of the client computer is not within the first list of authorized location ranges, requesting a download of a second software, the second software having a second list of authorized location ranges;

means for comparing the physical location of the client computer with the second list of authorized location ranges, and

means for downloading the second software only if the physical location of the client computer is within the range of one of the authorized location ranges from the second list of authorized location ranges.

9. (cancelled)

10. The system of claim 8, further comprising:

means for, upon determining that the client computer is not located within an authorized area for a requested software download, generating an alert to a software administrator server of the unauthorized area in which the client computer is located while attempting to download a restricted application.

11. The system of claim 8, wherein the means for storing the first and second lists of authorized location ranges are in the server.

12. The system of claim 8, wherein the physical location of the computer is determined from a Global Positioning System (GPS) signal.

13. The system of claim 8, wherein the physical location of the computer is determined from a local enterprise generated signal.

14. The system of claim 13, wherein the local enterprise generated signal is confined to a single room.

15. A computer program product, residing on a computer storage medium, for regulating a download of a software from a server to a client computer on a network, the regulating being determined by a physical location of the client computer on which the software is to be downloaded, the computer program product comprising:

program code for storing a first list of authorized location ranges where a client computer is authorized to receive a download of a first software from a server;

program code for determining a physical location of the client computer;

program code for comparing the physical location of the client computer with the first list of authorized location ranges;

program code for downloading the first software only if the physical location of the client computer is within the range of one of the authorized location ranges from the first list of authorized location ranges; and

program code for downloading the first software only if a Global Positioning System (GPS) receiver on the client computer does not detect a GPS signal.

16. The computer program product of claim 15, further comprising:

program code for, upon determining that the physical location of the client computer is not within the first list of authorized location ranges, requesting a download of a second software, the second software having a second list of authorized location ranges;

program code for comparing the physical location of the client computer with the second list of authorized location ranges, and

program code for downloading the second software only if the physical location of the client computer is within the range of one of the authorized location ranges from the second list of authorized location ranges.

17. The computer program product of claim 16, wherein the first and second lists of authorized location ranges are stored in the server.

18. (cancelled)

19. The system of claim 8, further comprising:

means for, in response to determining that the second software is not authorized to be downloaded to the client computer at a current physical location for the client computer, evaluating subsequent alternate programs until an authorized program is located on the server, and downloading the authorized program from the server to the client computer.

EVIDENCE APPENDIX

Other than the Office Action(s) and reply(ies) already of record, no additional evidence has been entered by Appellants or the Examiner in the above-identified application which is relevant to this appeal.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings as described by 37 C.F.R. §41.37(c)(1)(x) known to Appellants, Appellants' legal representative, or assignee.